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Nos. 87-206 and 87-371

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1987

STATE OF ALASKA, PETITIONER
v.
TRUSTEES FOR ALASKA, ET AL.

TRUSTEES FOR ALASKA, ET AL.,
CROSS-PETITIONERS
v.
STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALASKA

SUPPLEMENTAL BRIEF FOR STATE OF ALASKA IN RESPONSE TO THE VIEWS OF THE SOLICITOR GENERAL

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This supplemental brief responds to the brief filed by the Solicitor General.

The Solicitor General takes two positions that would improperly allow state courts to avoid federal limitations concerning the enforcement of federal law. First, he asserts that, whereas a federal court may not imply a private cause of action in derogation of an enforcement scheme established by Congress, a state court may. Second, he asserts that this Court has no jurisdiction to consider the petition of a state injured by its state court's misapplication of federal law where the state court plaintiffs alleged no "case" or "controversy." Neither issue is resolved by any holding of this Court, while both are of sufficient importance to call for grant of the petition of the State of Alaska ("Alaska").

The Solicitor General also errs on the merits. Disregarding the opinion of the Solicitor of the Department of the Interior, the Solicitor General incorrectly construes the language of section 6(i) of the Alaska Statehood Act. 1/

1/ See opinion of Solicitor Ralph W. Tarr, dated December 4, 1987, which is reproduced in the Appendix to this brief. In the normal course, Solicitor Tarr's conclusion that the Alaska Legislature's mining laws complied with section 6(i) would be dispositive, since any recommendation in favor of a forfeiture action would originate in Interior. Inexplicably, instead of deferring to Solicitor Tarr and focusing on the broad federalism issues, the Solicitor General fashioned an extensive fact statement to support his opinion about the "reasonableness" of the Alaska Supreme Court's determination of the particular policies at issue. Solicitor General's Brief ("S.G.") 12. In so doing, the Solicitor General erroneously concludes that the terms "rents or royalties, which do not appear in section 6(i), must be implied into the word "lease," while the term "mineral lands," which does appear in section 6(i), must be read out of the statute. Alaska adopts the further arguments on these points made in the supplemental brief of the Alaska Miners Association.

1. State courts cannot ignore federal limitations against implication of causes of action.

The Solicitor General agrees that a private cause of action would not be properly implied in federal court to enforce the "lease" condition placed on the grant of mineral lands to Alaska under section 6(i). S.G.17-18. He nonetheless reaches the conclusion that a state court is free to imply whatever causes of action it wishes. The suggestion that state courts have unrestrained power to imply causes of action under federal laws is supported by neither authority nor reason.

The Solicitor General cites no authority allowing state court implication of private causes of action under federal law in instances where federal courts may not imply a private right. Rather, the Solicitor General string cites cases brought in federal court,

S.G.19 n.12, and suggests, without analysis of the language, holdings, or logic of those cases, that a negative inference should be drawn from the fact that the reported cases have all been brought in federal court. S.G.19. However, at best, these cases prove only that the Court has not been presented with a case involving state court attempts to imply a cause of action under a federal law.

More importantly, the Solicitor General's position is directly contradicted by Davis v. Passman, 442 U.S. 228, 239 (1979), a case he does not cite. There, Justice Brennan wrote that the "cause of action" issue relates to

> which class of litigants may enforce in court legislatively created rights or obligations. If a litigant is an appropriate party to invoke the power of the courts, it is said that he has a "cause of action" under the statute....

(Emphasis added). Davis can be construed neither as permitting a party without power to invoke the authority of federal courts to enforce a federal statute to secure the power by simply filing his case in state court, nor as suggesting that state courts are any more free than federal courts to arrogate to themselves Congressional right-creating powers.

Nor is it adequate answer that a state court would provide a different enforcement remedy than provided by the federal law. Davis says that it is "entirely appropriate for Congress, in creating these rights and obligations, to determine in addition, who may enforce them and in what manner." Id. at 241 (emphasis added). Here, a "textually demonstrable commitment" (id. at 242) of enforcement authority is made, and it is solely to the United States Attorney General in federal court.

Nonetheless, the Solicitor General argues that the instant action should be construed as a state cause of action for relief by citizens of Alaska "injured" 2/ by the state's violation of federal law. S.G.18. This characterization cannot withstand scrutiny.

The Solicitor General's theory is based upon the "general jurisdiction" of the state courts. S.G.18. This theory fails for two reasons. First, as the Solicitor tacitly admits under his "preemption" analysis, it is a federal question whether private parties may seek to enforce a federal law, whether in federal or state court. S.G.21. Second, the Solicitor General must acknowledge on

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2/ This suggestion of injury is at odds with the Solicitor General's acknowledgement that there is no "injury" to the private plaintiffs. S.G.13-16.

the basis of his own brief that even a state court of general jurisdiction may only hear cases "within the legal bounds of rights or remedies," and "except as has been expressly and unequivocally denied ...." S.G.18 n.11, quoting from In re C.D.M., 627 P.2d 607, 610 (Alaska 1981) (emphasis deleted).

The Solicitor General suggests that it is not unusual for a state court to construe a federal law when the federal law pertains to "an element" of the "state-created cause of action." S.G. 19. However, here the Alaska Supreme Court disclaimed any intent to construe section 6(i) in order to decide an "element" of a state law cause of action, but instead stated that it was ruling "directly" upon section 6(i):

> Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of section 6(i). Since section 6(i) directly controls, we have

> no occasion to examine these theories further.

86-206 Petitioner's Appendix ("Pet.App.") B85. Here, unlike in the tort and other cases cited by the Solicitor General (S.G.19-20), there is no independent state cause of action, but an attempt to give private parties a "direct" enforcement action in state court.

The Solicitor General suggests that the "relevant question" is whether a state cause of action is "preempted by the Statehood Act" (S.G.20), and concludes that there was no intent to preclude the right of Alaskans to "petition their government, through its courts, for redress of grievances...." (S.G.21) (emphasis added) (footnote omitted). Even if "preemption" were the relevant question, the Solicitor General has drawn the wrong conclusion. Congress clearly intended to "occupy the field" with regard to enforcement of the section

6(i) lease condition, and private enforcement actions in state court interfere with that scheme. See, International Paper Co. v. Ouellette, ___ U.S. ___, 107 S.Ct. 805, 811-814 (1987).

The Solicitor General's concession that there would be no implied private right of action in federal court is dispositive: federal legislation which excludes private enforcement in federal court, surely preempts any private enforcement in state court.

Solicitor Tarr recognizes the "incompatibility" of state court enforcement actions. He points out, App. 13, that

> [i]n essence, the government's current exercise of prosecutorial discretion will have been preempted by the Alaska Supreme Court, without any participation of the United States.

Confusion would also result, since under the Solicitor General's view any state court decisions will have no res

judicata effect upon federal court consideration of a forfeiture action brought by the Attorney General. S.G.16-17. So far, the state superior court and the Solicitor of the Department of the Interior have concluded that the state laws comply with the leasing condition (Pet.App.A9-A12; App.5-10), while the Alaska Supreme Court and the Solicitor General have concluded otherwise (Pet. App.B51-B71; S.G.24-28). This confusion leaves the Alaska Executive and Legislature in an untenable position. 3/

The Solicitor General misconstrues Alaska as asserting that its courts may

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3/ Would the Solicitor General have concluded that the Alaska Legislature received "useful guidance" (S.G. 16) if the Alaska Supreme Court had ruled that Alaska's laws comply with the section 6(i) conditions? The propriety of state court implication of an enforcement remedy cannot turn on the state court's result on the merits.

not interpret its statehood act, and then string cites cases for the proposition that many state courts have interpreted their statehood acts. S.G.21-27. Alaska agrees that its courts are free to interpret federal law; they just cannot create rights in derogation of that federal law. None of the Solicitor General's string-cited cases present a similar statutory or factual context, and none address whether a private cause of action under federal law is properly created by a state court. 4/

4/ For instance, in Kanaly v. State by and through Janklow, 368 N.W.2d 819 (S.D. 1985), a state constitutional provision "mirrored" the federal enabling act. By contrast, section 6(i) of the Statehood Act is not incorporated into the Alaska Constitution. State of Alaska v. Lewis, 559 P.2d 630, 639 (Alaska 1977), cert. denied 432 U.S. 901 (1977). Also, in Kanaly, as in other cases cited by the Solicitor General, neither the enabling act nor the state constitutional provision contained a "textual commitment"

(footnote continued)

The Solicitor General suggests that it would be "paternalistic" to leave "guidance" of the state solely to the federal government. S.G.23. However, the Solicitor General's views, if given effect, would not remove the "paternalistic" nature of the federal government's enforcement role. Instead, his interpretation would simply authorize an intermeddling "uncle" to provide non-binding, but nonetheless coercive, "guidance." Moreover, in his rush to give deference to the state court, the Solicitor General ignores the fact that section 6(i) expressly calls for deference to Alaska's legislature, not its courts.

(Footnote Continued)
of enforcement authority of the provision at issue.

The Solicitor also states, without any basis, that

> [t]he Attorney General does not have the resources necessary to monitor the administration and disposition of the millions of acres of land that were granted the States. Suits by private parties and beneficiaries of the trusts can furnish an important means for insuring that the limitations imposed by Congress are respected.

S.G.23. These assertions must be rejected for three reasons.

First, the impulse to imply a private cause of action is always based on a claim that it would benefit overall enforcement. That has not prevented this Court from ruling in many particular cases that Congressional enactments do not permit private enforcement.

Second, the absence of a forfeiture suit in the nearly 30 years during which the state's mining laws have remained essentially unchanged is not due, as suggested by the Solicitor General, to

any lack of federal resources, but rather to the judgment that there was, in fact, no violation of the leasing condition. See Solicitor Tarr's Opinion, App.5-10.

Third, no court has held that section 6(i) creates a trust. Section 6(i) contains no trust language that in any way restricts the state's use of the mineral revenues from lands received under the section 6 grants. Moreover, the Solicitor General's attribution of trust beneficiary status in this discussion is at odds with his own contrary characterization in his Article III standing discussion.

The Solicitor General claims that section 28 of the Arizona-New Mexico Enabling Act, 36 Stat. 575, supports the idea that Alaska courts can seek to enforce the Alaska Statehood Act in suits brought by state citizens. S.G.23-24. However, the Arizona-New Mexico Enabling

Act expressly provides that the act does not limit the state and its citizens from enforcing the act. Congress could have provided similarly for the later-admitted states of Alaska and Hawaii, but did not. The Ninth Circuit has ruled that there is no implied private right of action to enforce conditions of the Hawaii Admissions Act. Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission, 588 F.2d 1216 (9th Cir. 1979), cert. den. 444 U.S. 826 (1979). 5/ Moreover, Keaukaha demonstrates that even the express trust provisions in the Hawaii Admission Act permitted no implication of

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5/ See discussion of this and related cases in State of Alaska's Petition Br. at 22-27. Respondent private parties omitted any discussion of these cases in their opposition brief, and the Solicitor General's attempt to avoid these and other controlling cases in footnotes is unpersuasive. See S.G.20 n.13, 24 n.18.

a private cause of action. 588 F.2d at 1218 n.2, 1220.

The Solicitor General's attempt to imply a private cause of action is unsupported by law or logic. At best, he has confirmed that there is an absence of clear precedent as to whether a state court may properly ignore Congressional limitations against the implication of private causes of action under federal laws. This argues in favor of granting review to resolve this important issue.

2. The Court has Article III jurisdiction to consider the petition.

The Solicitor General raises a concern, not previously addressed in this case, with this Court's jurisdiction under Article III of the Constitution. In particular, the Solicitor General suggests that because the private party plaintiffs in state court alleged insufficient injury to raise a "case" or

"controversy," there is no jurisdiction in this Court.

The State of Alaska agrees with the Solicitor General that respondent private parties have no more than generalized grievances about the conduct of government, and therefore would have had no Article III standing to bring a case in federal court. See S.G.14-15. Respondents would also have had no standing to appeal to this Court had the state court upheld the validity of the state mining law. Doremus v. Board of Education, 342 U.S. 429, 435 (1952) ("[T]he appellants cannot obtain a decision from this Court by a feigned issue of taxation.") (Emphasis added.)

The issue which has not been decided by this Court is the converse of that in Doremus: when a state court invalidates a state law based upon the application of a federal law, does the state court

plaintiff's lack of injury disqualify the defendant state, who is injured by the state court judgment, from pursuing its case or controversy in the United States Supreme Court? 6/ The Solicitor General attempts to obscure the issue and its unresolved nature by passing on it in a footnote. S.G.17 n.10. It deserves more scrutiny than that.

The purposes of the constitutional prohibition against hearing cases posing no "case" or "controversy" would be frustrated, rather than served, by denying Alaska Article III standing. The core purpose of the case or controversy

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6/ See Laurence H. Tribe, American Constitutional Law 113-114 and n.20 (2d ed. 1988), P. Bator et al., Hart & Wechsler's The Federal Courts and the Federal System 161, 181 (2d ed. 1973), and Barnes v. Kline, 759 F.2d 21, 63 n.16 (D.C. Cir. 1985)(Bork, J., dissenting) judgment vacated sub nom. Burke v. Barnes, 479 U.S. 361 (1987).

requirement is to insure proper functioning of the separation of powers. Allen v. Wright, 468 U.S. 737, 752 (1984). Due regard must also be made for the division of powers between state and federal governments. It would be ironic if the case or controversy requirement, designed to serve as a check against federal court usurpation of Congressional and federal executive functions, were allowed to be used as a shield behind which state courts could usurp those very same federal functions. 7/ To avoid this

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7/ While disagreeing that the state senators had standing in Coleman v. Miller, 307 U.S. 433, 466 (1939), Justice Frankfurter agreed with the majority that a state officer who is

> obstructed in the performance of his duty under a state statute because his state court found a violation of the United States Constitution may ... ask this court to remove the fetters against enforcement of his duty imposed by the state court because of an asserted misconception

(footnote continued)

ironic result, this Court should find the injury suffered by Alaska under the judgment of its Supreme Court sufficient to create a "case" or "controversy" under the Constitution.

DATED: May 18, 1988.

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(Footnote Continued)
of the Constitution.
Compare, Chief Justice Hughes's opinion, Id., 307 U.S. at 441, 443, 445. See also Diamond v. Charles, ___U.S.___, 106 S.Ct. 1697, 1703 (1986) ("Had the State of Illinois invoked this Court's appellate jurisdiction ... the "case" or "controversy" requirement would have been met, for a state has standing to defend the constitutionality of its statute.")

United States Department of the Interior

Office of the Solicitor
Washington, D.C. 20240

Dec -4 1987

The Honorable Roger J. Marzulla
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Applications for Certiorari in State of Alaska v. Trustees for Alaska, et al., S.Ct. Nos. 87-205, 87-206 and 87-371

Dear Mr. Marzulla:

We have corresponded with you several times in writing and recently in person, concerning the above petitions and cross-petitions for certiorari. In addition, members of this office have met with four attorneys from your office to discuss the position that the Federal Government should take in response to the Supreme Court's request for the government's views on whether certiorari should

be granted in any of the three petitions presently before the court.

Our previous comments, both written and oral, centered on whether the Trustees for Alaska (Trustees) should properly have been allowed to sue in state court to challenge the validity of Alaska's mineral leasing statutes under section 6(i) of the Alaska Statehood Act (section 6(i)). This question may properly be broken into two separate issues:

1. Whether the state court had jurisdiction to hear this suit; and
2. Whether section 6(i) provides for a private cause of action to enforce its provisions and conditions. (We have previously referred to this issue, somewhat imprecisely as the "standing" issue.)

In addition, the pending petitions raise two further issues:

3. Whether the state's mineral leasing laws in fact violate section 6(i); and

4. Whether the restrictions in section 6(i) apply to all state owned minerals, or only those that were "known mineral lands" at the time the state selected them.

It is my intention in this letter to reiterate my views on the first two questions and to provide you with this Department's position on the latter two questions. To facilitate understanding, issue number 3 above is addressed first. In summary, we concur in all respects with the positions taken by the State of Alaska and the Alaska Miners Association in these petitions. I would appreciate it if these comments and any others we may make after an opportunity to review your draft brief could be forwarded to the Solicitor General with your draft

brief. I understand that your draft brief is due to the Solicitor General on December 9.

Procedural Background

The procedural background is set forth in great detail in the various petitions to the Supreme Court. Suffice it to say that this suit arose as a challenge to the validity of Alaska's mineral leasing statutes under section 6(i), which reads:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter

> disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Note preceding 48 U.S.C. Sec. 21 (1982).

All of the issues presented by the three petitions involve interpretations of various portions of this language.

Whether the Alaska Mineral Leasing Laws Violate Section 6(i).

The Alaska Supreme Court ruled that because the Alaska laws do not exact a monetary rent or royalty from the mining of hardrock minerals, those laws violate section 6(i) and are invalid. We disagree with this holding.

The Alaska mineral laws require cash royalties from the most commercially viable minerals, oil, gas, and coal, while for the "hardrock" varieties of minerals, the state legislature in essence set cash royalty rates at zero

opting instead for an annual labor requirement that does not directly produce revenues for state coffers.

The only requirement imposed upon the State of Alaska in section 6(i) is that it retain title to the mineral estate in mineral lands selected under the Alaska Statehood Act. The Trustees argue and the Alaska Supreme Court found that a second requirement is imposed upon the State of Alaska. This alleged secondary requirement mandates that the state obtain monetary value for hardrock minerals as well as fluid minerals and coal. The basis for this additional alleged requirement is the sentence in section 6(i) which reads: "Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct. . . ." The Alaska Supreme Court adopted the view that the reference to leasing meant that

the state should receive monetary value from all mining of state lands.

The court's reading of the reference to leasing ignores the last clause of the sentence which reads, "as the State legislature may direct." This clause provides the Alaska legislature with broad discretion in the establishment of its leasing program. The Alaska legislature decided to set the cash rental value for hardrock minerals at zero. Instead, the Alaska legislature set the lease rental for hardrock minerals at "not less than the value of annual labor improvements required for mining claims" and allows the annual labor improvement (minimum $200) to be credited against the rent. AS 38.05.205, .210. We do not perceive any impropriety in these legislative actions.

It is true that Congress intended the leasing system to generate income for

the new state. It is also true that one way in which this objective was achieved was through keeping the subsurface estate in mineral lands in state ownership. While it is undeniable that Congress chose the leasing alternative out of concern for the financial well-being of the fledgling state, it is equally undeniable that Congress left the amount of royalties to be collected from the state's leasing program to the discretion of the state legislature and did not provide any definition or framework of reference establishing a clear intent as the meaning of the term "lease." The only clear statement from Congress on this issue was the deferral of discretion to the state legislature. We submit that the Alaska Supreme Court's holding is incorrect, because the state legislature acted within its discretion under section 6(i).

A major concern at statehood, expressed both in Congress and in the territorial legislature, centered on provisions in the 1872 Mining Law that allowed patenting of the land, including the mineral estate, to a mining claimant. Such patenting deprives the United States of title to all minerals in the subsurface of the claimed area, not just to those minerals found to be valuable.

The construction of section 6(i) also demonstrates that the leasing reference was not intended as a separate requirement. The sentence in section 6(i) containing the leasing requirement immediately follows and is juxtaposed with a sentence that prohibits the state from disposing of the mineral estate in its mineral lands. The first sentence says what the state may not do -- alienate title to the mineral estate. The next sentence says what the state may do

-- lease as the state legislature may direct. Considering the severity of the penalty provisions calling for forfeiture, the simple word "lease" should not be read to have imposed additional requirements on the State of Alaska beyond the clear non-alienation requirement.

State Court Jurisdiction and Private Attorney General Standing

The remedy and jurisdiction provided in section 6(i) preclude both concurrent state court jurisdiction and private enforcement from occurring. Section 6(i) explicitly sets forth the forfeiture remedy for violations of its provisions, the party who shall bring such an action and the court in which such an action shall be brought. Its language is clear and unambiguous. If minerals are disposed of contrary to its provisions, then the Attorney General (of the United States) shall institute proceedings to

declare the lands or minerals so disposed of forfeited to the United States. Furthermore, such an action must be brought in U.S. District Court for the District of Alaska.

This Department concurs fully with the arguments presented in pages 6-11 of the petition for certiorari filed by the Alaska Miners Association concerning the issues of standing to sue as private attorney general and concurrent state court jurisdiction. These arguments are summarized below.

The United States Supreme Court has established a presumption that state courts have concurrent jurisdiction to adjudicate enforcement of federal statutes, except where Congress has demonstrated a contrary intent. Such intent may be evidenced by a clear incompatibility between state court

jurisdiction and the federal interests at stake.

The facts before the court demonstrate such incompatibility. As noted above, we disagree with the Alaska Supreme Court ruling that the Alaska mineral leasing statutes violate section 6(i). Any judicial determination of whether a violation exists should be made by the Federal District Court for the District of Alaska at such time as an enforcement action is instituted by the Attorney General. In the present circumstances this Department has not requested the Attorney General to institute such an action. If the Alaska Supreme Court proceeding is deemed appropriate under the Alaska Statehood Act and that court's decision in this case is allowed to stand, the determination of the United States government that the Alaska statutory scheme is appropriate will be given

no force and effect. In essence, the government's current exercise of prosecutorial discretion not to institute proceedings will have been preempted by the Alaska Supreme Court, without any participation of the United States.

This fact comes into sharp focus when coupled with the reality that if the appealed Alaska ruling is allowed to stand, the Attorney General would be subject to an action in mandamus to enforce the forfeiture provisions. If the mandamus action were successful, the state court ruling would have preempted federal prosecutorial discretion and violated the clear directive in section 6(i).

It is logically inconsistent to argue that a state law could violate section 6(i) without triggering the forfeiture requirement imposed by section 6(i) on the Attorney General. Yet the

facts in this case present this very dilemma. The plaintiff Trustees who charge Alaska with violating section 6(i) cannot bring the forfeiture action. Congress reposited both functions in the same entity in order to avoid such an incongruous result.

The Trustees' efforts to institute a private cause of action conflict with the federal responsibility to enforce the forfeiture provisions of section 6(i). Consequently, the jurisdiction of the Federal District Court for the District of Alaska over actions challenging the validity of state law under section 6(i) must be considered exclusive.

In cases where Congress has created only public means of enforcing a federal statute, such as section 6(i), there is a presumption that there is no private cause of action absent a clear showing of congressional intent to permit private

enforcement. The record in this case is devoid of any indication that Congress intended to permit any enforcement other than that explicitly provided in section 6(i): a forfeiture action brought by the U.S. Attorney General. The incompatibility described above also supports our conclusion that Congress did not intend to allow for private enforcement of the conditions of section 6(i).

Since the law under which the Alaska mineral leasing laws must be reviewed contains a remedy and forum exclusive of the Trustees and the Alaska state courts, not only did Trustees for Alaska not have standing to bring this suit, the Alaska state courts did not have jurisdiction to hear it.

Whether the Section 6(i) Restrictions Apply to All State Minerals or Only to Those Mineral Lands That Were Known at the Time of Selection

The Trustees have filed a cross-petition for certiorari on the issue of

whether the section 6(i) restrictions apply to all state owned minerals or only to those lands that were known to be valuable for minerals at the time of selection. The Alaska Supreme Court held in favor of the latter proposition. We concur with the state court on this issue.

On its face, section 6(i) states that the non-alienation requirement applies only to "mineral lands:"

> The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the minerals in the lands....

(Emphasis added.)

The use of the words "mineral lands" was an intentional choice of a term of art long understood in the lower 48 states as referring only to lands known

to be valuable for minerals at the time title passes to the state. United States v. Sweet, 245 U.S. 563 (1918). The state supreme court's discussion of the background of this term and its knowing use in light of the legislative history of the Alaska Statehood Act comports fully with our views. The intent of Congress was to put Alaska in roughly the same position as other public land states.

Other states did not receive title to lands known to be valuable for minerals until Congress specifically extended the land grants to include "mineral lands" in 1927. When Congress so extended the grants, it imposed a condition on all such lands that the states receiving them could only lease minerals therein, and could not alienate title to the minerals.

43 U.S.C. Sec. 870(b). Lands previously granted on which minerals were

later discovered, however, are not subject to this restriction. Congress intended the same result for Alaska and its use of the term "mineral lands" in section 6(i) accomplished that result. We see no merit in the Trustees' cross-petition.

Conclusion

We fully support the petitions for certiorari filed by the State of Alaska and the Alaska Miners Association. We do not support the petition filed by Trustees for Alaska.

If you have any questions or comments concerning any of the above, please contact Scott Loveless of this office at 343-4444. Thank you for your continued cooperation.

Sincerely,

/s/

Ralph W. Tarr
Solicitor